

Decision Record

Snowstorm Exploration Project Environmental Assessment DOI-BLM-NV-W010-2012-0063-EA

Introduction

On November 21, 2011, Snowstorm Exploration LLC (SEL) submitted a Plan of Operations (Plan) to the Bureau of Land Management (BLM) to expand their existing notice-level activities in the Snowstorm Mountains and Kelly Creek areas located northwest of Midas and southeast of Chimney Reservoir on the Little Humboldt River. The project area is located approximately 40 miles north-northeast of Winnemucca in Humboldt County, Nevada (T. 41 N., R. 43 E., portions of sections 1, 9 - 12, 14 -16, and 20 - 36; T.40 N., R. 43 E., portions of sections 1 - 5, 8 - 13, 16, and 17; and T. 40 N., R. 44 E., portions of sections 4 – 8).

Notice exploration activities consist of overland travel, constructed access roads, and drill sites. Similar disturbances are proposed for the Plan with up to 200 acres of disturbance on public and private land proposed to be completed in multiple phases over the next 10 years. The Plan also includes two staging areas and may include monitoring wells and a meteorological station. The project boundary would encompass about 19,801 acres located entirely in Humboldt County. Phase I was originally proposed on November 21, 2011, to consist of 149.55 acres of disturbance that included the then existing disturbance (21.73 acres of public land and 3.29 acres on private land) and 124.53 acres of new disturbance. This acreage was included in the Preliminary Environmental Assessment (PEA) that was published on May 15, 2013. Work was suspended on the project at the request of SEL on December 24, 2013, while the BLM was addressing public comments regarding Greater sage-grouse from the PEA. Work resumed on the EA in August 2014. At the request of SEL, on August 8, 2014, the Phase I disturbance was decreased to approximately 67.8 acres of disturbance that includes the existing disturbance (16.5 acres of public land and 3.3 acres on private land) and 48.0 acres of new disturbance.

Compliance/Conformance

The Proposed Action is in conformance with, and is consistent with the *Winnemucca District Resource Management Plan*, approved May 21, 2015. The Proposed Action is consistent with the plans and policies of neighboring local, county, state, tribal, and federal governments to the greatest extent possible. Under the Proposed Action, no federal, state, or local law, or requirement imposed for the protection of the environment will be threatened or violated.

Decision

Based on the Snowstorm Exploration Project Environmental Assessment (EA), DOI-BLM-NV-W010-2012-0063-EA, and the attached Finding of No Significant Impact (FONSI) it is my decision to implement the Proposed Action.

Public Involvement

Preliminary Environmental Assessment

On May 15, 2013, a notification of availability to review the Preliminary Environmental Assessment (PEA) was posted to the BLM's website and sent to potentially interested parties by the BLM. Thirty-nine comment letters were received from individuals, mining and exploration companies, consultants, product

suppliers, and groups serving the mineral industry (Nevada Mineral Exploration Coalition and Northwest Mining Association). All comments opposed the environmental protection measures (EPMs) for Greater sage-grouse and questioned:

1. The science behind the National Technical Team's sage-grouse report;
2. The legality (in regards to FLPMA, 43 CFR 3809) of BLM enforcing a 3.2-mile lek buffer with timing restrictions;
3. Whether BLM realizes the negative impact these restrictions will have on the mineral exploration industry; and
4. Whether a “blanket” restriction that does not account for topography and/or vegetation (i.e., no sagebrush present due to historic fires) is arbitrary and capricious.

In response to these comments, a meeting was held with the proponent on September 12, 2013, to discuss options for moving forward. These options were:

- Option 1: Issue EA with a 3.2-mile lek buffer but include a requirement for additional line-of-sight and noise studies to evaluate if the southern burned portion of the area can be excluded from the buffer. This would require additional NEPA analysis.
- Option 2: Perform line-of-sight and noise studies pending approval of the EA. Upon completion of studies, rewrite the EA, as needed, and publish the revised EA for a second public comment period that introduces an alternative to the 3.2-mile lek buffer based on the completed studies. This would not require additional NEPA analysis and should take an additional two to three months for a decision on the EA.
- Option 3: Issue the EA with only minor editorial revisions to the PEA.

The proponent chose to proceed with Option 2 in order to determine if the restrictions imposed by the 3.2-mile lek buffer could be relaxed.

The BLM and NDOW evaluated existing sound and visual studies and adapted them to fit Nevada climatic, topographic, and habitat conditions. The BLM and NDOW finalized the noise protocols on November 25, 2013. Visual analyses were performed that showed topography could prevent the drill rig from being seen at the lek site, but not at all nesting sites that may be present within the 3.2-mile lek buffer. Enviroscientists performed the ambient sound studies from December 9 through December 12, 2013. However, the noise study was not completed due to internal business dealings by the proponent. A review of the ambient sound study report submitted on February 24, 2014, was completed by NDOW wildlife specialists who did not agree with the methodology or timing of the study.

SEL requested that work be suspended on the project due to internal business dealings in December 2013. Upon project restart in July 2014, SEL requested that Option 3 listed above be followed instead of Option 2 for internal business reasons. SEL also reduced the amount of disturbance proposed to occur in Phase I from 149.6 acres to 67.8 acres. The BLM agreed to restart the project under the existing NEPA. The revised plan of operation was approved on August 18, 2014.

On February 9, 2015, Instruction Memorandum (IM)-NV-2015-0017 was issued. This policy replaced the sage-grouse habitat map issued with IM-NV-2012-058 with a new map for Greater sage-grouse prepared by the U.S. Geological Survey. The BLM determined that this project would continue forward with the old map issued with IM-NV-2012-058 because it had been submitted and was near completion prior to adoption of IM-NV-2015-0017

Native American Consultation

On June 4, 2012, letters providing information relating to the Proposed Action were sent to the Te-Moak Tribal Council; the Battle Mountain, Elko, South Fork, and Wells Bands of the Te-Moak Tribe of Western Shoshone; the Fort McDermitt Paiute and Shoshone Tribe; and the Shoshone-Bannock Tribes. In addition, on June 6, 2012, a consultation initiation/invitation letter was sent to the Shoshone Paiute Tribes of the Duck Valley Indian Reservation. Follow-up phone calls were made to the above listed Tribes on July 5 and 6, 2012, to determine whether the Tribes had any concerns about the Proposed Action, effects it may have on traditional cultural properties or sacred sites, or whether the Tribe would like to have formal government-to-government consultation relating to the Proposed Action. None of the Tribes expressed interest in further consultation until May 2015, when the McDermitt Paiute and Shoshone Tribe asked for an update on the project during the course of a government-to-government consultation meeting.

Rationale

My decision is based on the attached FONSI, the Proposed Action, which includes the Greater sage-grouse environmental protection measures listed below, and the environmental analysis in the EA. The Proposed Action will not result in any unnecessary or undue environmental degradation of public lands, and it has addressed public comments and is consistent with federal, state, and local laws, regulations, and plans.

Through the NEPA process, SEL committed to the following environmental measures for the protection of Special Status Species as part of their Plan.

- In order to avoid potential impacts to pygmy rabbits, annual pre-disturbance surveys would be conducted by a qualified biologist within the two identified areas of pygmy rabbit habitat within the Project Area. If burrows or burrow complexes are identified within suitable sagebrush habitat in these two identified areas, a 400-foot buffer around the burrows or burrow complexes would be applied per IM-NV 2003-064(P) to ensure the burrows would not be impacted by Project activities.
- In order to reduce potential impacts to Greater sage-grouse within the Project Area, the following stipulations would be followed:
 - Sumps would be constructed with slopes of 2H:1V or flatter on one side to allow for safety of personnel and wildlife;
 - Once a drill site is no longer occupied, any associated drill sump would be fenced with highly visible temporary safety barriers that would eliminate the hazard for entanglement and would remain in place until reclamation of the sump has been completed;
 - Corner posts would be secured in undisturbed ground rather than loose spoil material; and
 - Excess fence material would be removed upon completion of Project activities.
 - Within the proposed Project Area, vehicular travel would be permitted on existing roads only from 10 a.m. through 4 p.m. daily between March 1 and June 30 within a 3.2-mile buffer around the active lek site. All vehicles being actively used (including ATVs, OHVs, and UTVs) must be outside the 3.2-mile buffer area prior to 10 a.m. and after 4 p.m. Equipment and vehicles not in use may be left on site but must be shut down. No other mechanical disturbance activities (i.e., drilling, off-road travel, ATV use, grading) would be permitted on BLM-administered land during this time frame in order to avoid potential impacts to the Greater sage-grouse lek within the proposed Project Area. An exception to these restrictions is

Shelton Lane (also known as the Little Humboldt River Road), a Humboldt County road, which may be used for vehicular travel within the Project Area at any time (Map 2.1.2).

SEL also proposed and committed to other environmental protection measures as part of their plan of operations. All environmental protection measures are listed on pages 2-11 through 2-15 of the EA.

Based on the President's National Energy Policy and Executive Order 13212, the Proposed Action will not generate any adverse energy impacts or limit energy production and distribution. Therefore, no "Statement of Adverse Energy Impact" is required.

Authority

The authority for this decision is contained in the Mining Law of May 10, 1872, as amended (17 Stat. 91), the Surface Resources Act of 1955 (30 United States Code (U.S.C.) 611-614), the Federal Land Policy Management Act (FLPMA) of 1976 (43 U.S.C. 1701 et seq.), and the Code of Federal Regulations (CFR) at 43 CFR 3809.

Appeal Provision

If you are adversely affected by this decision, you may request that the BLM Nevada State Director review this decision. If you request a State Director Review, the request must be received in the BLM Nevada State Office at:

BLM Nevada State Office
State Director
1340 Financial Blvd.
Reno, Nevada 89502

no later than 30 calendar days after you receive or have been notified of this decision. The request for State Director Review must be filed in accordance with the provisions in 43 CFR 3809.805. This decision will remain in effect while the State Director Review is pending, unless a stay (suspension) is granted by the State Director. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

If the State Director does not make a decision on your request for review of this decision within 21 days of receipt of the request, you should consider the request declined and you may appeal this decision to the Interior Board of Land Appeals (IBLA). You may contact the BLM Nevada State Office to determine when the BLM received the request for State Director Review. You have 30 days from the end of the 21-day period in which to file your Notice of Appeal with this office at 5100 E. Winnemucca Blvd., Winnemucca, Nevada, 89445, which we will forward to IBLA.

If you wish to bypass a State Director Review, this decision may be appealed directly to the IBLA in accordance with the regulations at 43 CFR 3809.801(a)(1). Your Notice of Appeal must be filed in this office at 5100 E. Winnemucca Blvd., Winnemucca, Nevada, 89445, within 30 days from receipt of this decision. As the appellant, you have the burden of showing that the decision appealed from is in error. Enclosed is BLM Form 1842-1 that contains information on taking appeals to the IBLA.

This decision will remain in effect while the IBLA reviews the case, unless a stay is granted by the IBLA. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Request for a Stay

If you wish to file a petition (request) pursuant to regulations 43 CFR 4.21 for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by IBLA, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of this notice of appeal and petition for a stay must also be submitted to each party named in the decision and to the IBLA and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal must show sufficient justification based on the following standards:

1. The relative harm to parties if the stay is granted or denied.
2. The likelihood of the appellant's success on the merits.
3. The likelihood of immediate and irreparable harm if the stay is not granted.
4. Whether the public interest favors granting the stay.

/s/ James W. Schroeder

James W. Schroeder, Field Manager
Humboldt River Field Office

6/26/2015

Date

Attachments:

EA (DOI-BLM-NV-W010-2010- 0063-EA)
Finding of No Significant Impact (FONSI)
Form 1842-1 (September 2006)